

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMEAL THOMAS,

Plaintiff,

Case No. 07-13396

v.

Honorable Patrick J. Duggan

JOHN S. RUBITSCHUN, BARBARA S.
SAMPSON, JAMES QUINLAN, MIGUEL
BERRIOS, and JAMES ATTERBERRY,

Defendants.

ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on September 24, 2008.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On August 15, 2007, Jameal Thomas ("Plaintiff") filed a "Complaint for Declaratory and Injunctive Relief" ("Complaint") against John S. Rubitschun, Barbara S. Sampson, James Quinlan, Miguel Berrios, and James Atterberry ("Defendants") stemming from their decisions to deny Plaintiff parole in 2005 and 2007. This Court referred all pretrial proceedings to Magistrate Judge Steven D. Pepe pursuant to 28 U.S.C. § 636(b)(1)(A) on December 21, 2007. On June 11, 2008, Defendants filed a motion to dismiss and/or a motion for summary judgment. Pursuant to the referral order, Magistrate Judge Pepe considered Defendant's motion and issued his Report and Recommendation

("R&R") on August 29, 2008.

In the R&R, Magistrate Judge Pepe indicates that "Plaintiff has failed to file a response to the present motion." Plaintiff filed various objections to the R&R including his assertion that he hand-delivered his response to prison officials for expedited mailing on June 30, 2008. Upon review, this Court has discovered a "Judge's Copy" of Plaintiff's response in the case file. The "Judge's Copy" is marked as being filed by the Clerk's Office on July 3, 2008, but was never electronically filed. The Court has since remedied this defect in the electronic case file and Plaintiff's response is now document 38 in the docket.

Because Magistrate Judge Pepe's R&R does not consider Plaintiff's response, this Court once again refers the matter to Magistrate Judge Pepe.

Accordingly,

IT IS ORDERED that Defendants' Motion to Dismiss and/or Summary Judgment be referred to Magistrate Judge Pepe for consideration in light of Plaintiff's response.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
Jameal Thomas #309330
4533 W. Industrial Park Dr.
Kincheloe, MI 49786

Charles C. Schettler, Jr., Esq.